on their part is tantamount to waiver. Even if it is not, I am of the opinion that technical non-compliance with Order LXI, r. 5 is an irregularity (if any) which does not render the final judgment a nullity. It is an irregularity which does not necessarily render the judgment void unless I so direct, under Order LXIII, r. 1 and, for the reasons I have stated, I do not feel disposed to do so. If it is an irregularity then it is one which the court has power to condone at its discretion in the light of all the surrounding circumstances (see *Petty* v. *Daniel* [6]).

I therefore, do not propose to declare the judgment void or to set it aside. The application is therefore, dismissed with costs.

Application dismissed.

Solicitors: *L. A. J. Smith; Pillai & Co.*

OVERSEA CHINESE TRANSPORT CO. LTD. v. PUBLIC PROSECUTOR

[A.Cr.J. (Winslow J.) December 18, 1964]

[Singapore — Magistrate's Appeal No. 81 of 1964]

Road Traffic — Using a vehicle as goods vehicle without licence — Meaning of "goods vehicle" — Motor Vehicles (Goods of Public Service Vehicles Licensing) Rules, 1948, r. 3 — Road Traffic Ordinance (Cap. 227) ss. 2 and 12(1).

In this case a motor vehicle which was drawing a trailer was stopped at the Woodlands check point in Singapore. The trailer was licensed as a goods vehicle in Singapore but the drawing motor vehicle was not licensed. The appellants the owners of the motor vehicle were subsequently charged for using the motor vehicle as a goods vehicle without a licence. The appellants appealed against their conviction and argued that the motor vehicle was merely a drawing vehicle of the nature of a tractor which was neither constructed for use for the carriage of goods nor adapted for such use within the meaning of the definition of "goods vehicle" in section 2 of the Road Traffic Ordinance.

Held: as the motor vehicle in this case was neither constructed nor adapted for the carriage of goods the conviction must be quashed.

Case referred to:—

(1) *James* v. *Davies* [1952] 2 All E.R. 758.

MAGISTRATE'S CRIMINAL APPEAL.

Goh Bin Lay for the appellants.

J. Dorai Raj (Deputy Public Prosecutor) for the respondent.

Winslow J.: In this case I allowed the appeal on 9th December, 1964 stating that I would give my reasons later.

The appellants were charged as follows:—

"That they, on or about the 22nd day of June, 1963 at about 12.20 p.m. at 15¾ m.s. Woodlands check point, Singapore, being the registered owners of motor lorry No. JB. 9003, used the said vehicle in Singapore without same being duly licensed, in contravention of rule 3 of the Motor Vehicles (Goods of Public Service Vehicles Licensing) Rules 1948 and that they thereby committed an offence under section 12(1) of the Road Traffic Ordinance (Chapter 227)."

The facts are that motor vehicle No. JB. 9003, which was drawing a trailer, was stopped at the Woodlands check point before entering Singapore because, according to the prosecution, although the trailer was licensed as a goods vehicle in Singapore the drawing vehicle No. JB. 9003 was not so licensed as required by rule 3 above. The driver refused to return to Johore and he was therefore arrested. Subsequently a report was made and the appellants, who are owners, were charged as above.

It would appear on these facts that no use was made of vehicle No. JB. 9003 at all in Singapore and, in the circumstance, I fail to understand how any one could have been charged for using it in Singapore in contravention of the Singapore law on the subject notwithstanding the fact that it was licensed as a goods vehicle in Johore.

The appeal therefore succeeded on this ground alone although it was surprisingly never raised by the appellants who sought to rely on another ground *viz.*, that the vehicle was merely a drawing vehicle of the nature of a tractor which was neither constructed for use for the carriage of goods nor adapted for such use within the meaning of the definition of "goods vehicle" in section 2 of the Road Traffic Ordinance (Cap. 227).

With this ground I entirely agree. The vehicle had no platform or "body", so to speak, to enable it to carry any goods. It was just an engine on wheels with a cabin for the driver and a pivot behind which could enable it to be used as a drawing vehicle to draw a trailer or any other contrivance on wheels. On this I was asked to hold on the authority of *James* v. *Davies* [1] that it was adapted for use for the carriage of goods. In that case Lord Goddard C.J. said —

"It is found by the justices that the vehicle in question here was constructed for the carriage of goods. Was it being then used for the conveyance of goods? If it was being used to convey goods from one place to another, it seems to me not to matter in the least whether the goods were laden on the vehicle itself or laden in a trailer which the vehicle was drawing. If the view which commended itself to the justices was right, it would follow that furniture removers could move furniture in large pantechnicon trailers, and if they drew them by a vehicle which, though constructed to carry goods, had no furniture in it, it could be said that they were not liable to pay the heavier rate of duty for goods vehicles. I think that once a mechanically propelled vehicle is conveying goods, as this vehicle was conveying the goods, although by means of a trailer, the question becomes easy. The vehicle was adapted for use, and it was being used, for the conveying of goods or burden because it was moving potato trays from one place to another. Accordingly, I think this case must go back to the justices with an intimation that the case was proved."

It must, however, be remembered that the definition of "goods vehicle" in that case, under

section 27 of the Vehicles (Excise) Act, 1949, reads as follows:—

" 'goods vehicle' means a mechanically propelled vehicle (including a tricycle weighing more than eight hundredweight unladen) constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or otherwise."

Our definition reads —

" 'goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods or a trailer so constructed or adapted."

The first essential difference is that, in our definition, a "goods vehicle" includes a trailer so contructed or adapted, whereas in England, in the case in question, it did not. The trailer in our case was also licensed as a goods vehicle. Why the drawing vehicle should also be so licensed, if it is not so constructed or adapted, I do not know.

Secondly, the additional words "and used for the conveyance of goods" which appear in the English provision are missing in ours.

In the absence of words such as these I am unable to conclude that the motor vehicle No. JB. 9003 was a goods vehicle within our definition. If the definition had read "adapted for use and used for the conveyance of goods" the position would have been otherwise. Lord Goddard C.J. in the English case had to deal with such a situation where, on the facts, it was found that the vehicle had been constructed for the carriage of goods and was, in fact, being used for the conveyance of goods. Here the vehicle was not so constructed. Nor was it adapted for such use any more than a tug towing a cargo boat can be said to be adapted for use for the carriage of cargo. There would be nothing to prevent its being used for towing a passenger liner. "Adapted" means "fitted, made suitable, altered so as to be fit for". It does not mean "adaptable".

I therefore allowed the appeal. The conviction was quashed and the fine, if paid, was ordered to be refunded.

Appeal allowed.

Solicitors: *Goh Bin Lay & Co.*

MOHAMED ALI & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) December 22, 1964]

[K.L. — Criminal Appeal No. 87 of 1964]

Criminal Procedure — Accomplice evidence — Need for corroboration — No independent testimony — Conviction on evidence of self-confessed thieves — Criminal Procedure Code (Cap.6), s. 173(f).

Penal Code, s. 379 — Theft — Evidence of self-confessed thieves against co-accused — Need for corroboration.

Evidence — Accomplice evidence — Need for corroboration by independent testimony.

It has long been a salutary practice having the force of a rule of law that the evidence of an accomplice must be corroborated by independent testimony not only that the crime had been committed but also that the accused person committed it.

Although the appellants participated in the theft the only evidence connecting them with the alleged offence was the uncorroborated evidence of two self-confessed thieves. Therefore their conviction cannot under any circumstances be upheld.

Case referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 653.

MAGISTRATE'S CRIMINAL APPEAL.

Dato' R. P. S. Rajasooria for the appellants.

Idris Yusoff (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellants were charged, together with four others, for theft of copper-wire belonging to Petaling Tin Dredging Ltd., in contravention of section 379 of the Penal Code. The four other accused pleaded guilty before the magistrate, Kuala Lumpur, on December 30, 1963, and were thereupon convicted and sentenced each to three months' imprisonment. The appellants, who claimed trial, were subsequently convicted in the magistrate's court on April 22, 1964, and sentenced to similar terms of imprisonment. They now appeal against their conviction and sentence.

The only evidence connecting them with the alleged offence was that of two of the self-confessed thieves. There was, however, not an iota of independent testimony to corroborate the evidence of these two accomplices. It has long been a salutary practice, having the force of a rule of law, that the evidence of an accomplice must be corroborated by independent testimony not only that the crime has been committed but also that the accused person committed it: see *R.* v. *Baskerville.*(1) Although I am as satisfied as was the learned magistrate that these appellants did participate in the theft, I am equally satisfied that in law their conviction cannot under any circumstances be upheld because, under section 173(f) of the Criminal Procedure Code, the learned magistrate should have acquitted them at the close of the case for the prosecution.

I accordingly allow this appeal and set aside their conviction and sentence.

Appeal allowed.